

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Jose Martinez,

Plaintiff,

v.

**Yellow Owl Properties
Managements, Inc,** a California
Corporation;
Flores Meat Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Jose Martinez complains of Defendants Yellow Owl Properties Managements, Inc, a California Corporation; Flores Meat Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a quadriplegic. He uses a wheelchair for mobility. He drives a van with a ramp that deploys out of the passenger side.

2. Defendants are, or were at the time of the incidents, the real property

1 owners, business operators, lessors and/or lessees for the Flores Meat Market
2 (“Market”) located at or about 1200 West Anaheim Street, Wilmington,
3 California.

4 3. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein,
9 including Does 1 through 10, inclusive, is responsible in some capacity for
10 the events herein alleged, or is a necessary party for obtaining appropriate
11 relief. Plaintiff will seek leave to amend when the true names, capacities,
12 connections, and responsibilities of the Defendants and Does 1 through 10,
13 inclusive, are ascertained.

14 15 **JURISDICTION & VENUE:**

16 4. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
18 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 5. Pursuant to pendant jurisdiction, an attendant and related cause of
20 action, arising from the same nucleus of operative facts and arising out of the
21 same transactions, is also brought under California’s Unruh Civil Rights Act,
22 which act expressly incorporates the Americans with Disabilities Act.

23 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26 27 **FACTUAL ALLEGATIONS:**

28 7. The Plaintiff went to the Market in February of 2015 to eat.

1 8. The Market is a facility open to the public, a place of public
2 accommodation, and a business establishment.

3 9. Parking spaces are one of the facilities, privileges and advantages
4 offered by defendants to customers of the Market.

5 10. Unfortunately, although parking spaces are one of the facilities
6 available to customers who patronize the Market, there is not a single
7 compliant parking space reserved for persons with disabilities. Instead, there
8 is a faded parking space that measures 96 inches and has an access aisle that
9 measures 52 inches in width. This parking space is not compliant for small
10 cars, let alone vans, which is what plaintiff drives. The International Symbol
11 of Accessibility logo has faded. And there is no "No Parking" warning in the
12 access aisle. Additionally, the signage has a bunch of stickers covering the
13 words. In sum, defendants do not maintain their parking lot so that parking
14 spaces are available for use by persons with disabilities.

15 11. However, on information and belief, plaintiff alleges that a fully
16 compliant, accessible parking space once existed at this location but the
17 parking space has been allowed to fade to the point that it is no longer
18 available for use by persons with disabilities. Defendants simply do not
19 maintain their parking lot so that it is accessible for persons with disabilities.

20 12. Defendants have no policy or procedure in place to make sure that the
21 accessible parking spaces remain useable in the parking lot. As such, the
22 parking space reserved for persons with disabilities is no longer available.

23 13. Additionally, the transaction counter in the meat and hot food section
24 of the Market, which does not appear to have a cash register, is where sales or
25 distribution of goods or services takes place and is not accessible to persons
26 with disabilities because there is no portion of main counter measuring 36
27 inches in height, or auxiliary counter measuring 36 inches in height or
28 qualifying equivalent facilitation provided.

1 14. The plaintiff personally encountered this problem. This inaccessible
2 condition denied the plaintiff full and equal access and caused him difficulty
3 and frustration.

4 15. Although there are shelves and merchandise aisles open to customers
5 for shopping, and even though plaintiff did not personally confront this
6 barrier, the path of travel in and throughout these merchandise aisles is not
7 accessible to wheelchair users because of the configuration of the store and
8 also because the defendants have a practice of placing merchandise and
9 merchandise display on the route of travel restricting passage to far less than
10 36 inches in width. In fact, some parts of the Market have aisles that are
11 narrow as 26 inches in width.

12 16. Plaintiff would like to return and patronize the Market but will be
13 deterred from visiting until the defendants cure the violation. Plaintiff lives
14 less than five miles from the Market. The Market is conveniently located.
15 Plaintiff would like to return.

16 17. The defendants have failed to maintain in working and useable
17 conditions those features required to provide ready access to persons with
18 disabilities.

19 18. Given the obvious and blatant violation, the plaintiff alleges, on
20 information and belief, that there are other violations and barriers on the site
21 that relate to her disability. Plaintiff will amend the complaint, to provide
22 proper notice regarding the scope of this lawsuit, once she conducts a site
23 inspection. However, please be on notice that the plaintiff seeks to have all
24 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
25 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
26 she can sue to have all barriers that relate to her disability removed regardless
27 of whether she personally encountered them).

28 19. Additionally, on information and belief, the plaintiff alleges that the

1 failure to remove these barriers was intentional because: (1) these particular
 2 barriers are intuitive and obvious; (2) the defendants exercised control and
 3 dominion over the conditions at this location and, therefore, the lack of
 4 accessible facilities was not an “accident” because had the defendants
 5 intended any other configuration, they had the means and ability to make the
 6 change.

7
 8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 9 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 10 defendants (42 U.S.C. section 12101, et seq.)

11 20. Plaintiff repleads and incorporates by reference, as if fully set forth
 12 again herein, the allegations contained in all prior paragraphs of this
 13 complaint.

14 21. Under the ADA, it is an act of discrimination to fail to ensure that the
 15 privileges, advantages, accommodations, facilities, goods and services of any
 16 place of public accommodation is offered on a full and equal basis by anyone
 17 who owns, leases, or operates a place of public accommodation. See 42
 18 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 19 a. A failure to make reasonable modifications in policies, practices,
 20 or procedures, when such modifications are necessary to afford
 21 goods, services, facilities, privileges, advantages, or
 22 accommodations to individuals with disabilities, unless the
 23 accommodation would work a fundamental alteration of those
 24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 25 b. A failure to remove architectural barriers where such removal is
 26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 27 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 28 Appendix “D.”

1 c. A failure to make alterations in such a manner that, to the
 2 maximum extent feasible, the altered portions of the facility are
 3 readily accessible to and usable by individuals with disabilities,
 4 including individuals who use wheelchairs or to ensure that, to
 5 the maximum extent feasible, the path of travel to the altered
 6 area and the bathrooms, telephones, and drinking fountains
 7 serving the altered area, are readily accessible to and usable by
 8 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

9 22. Any business that provides parking spaces must provide handicap
 10 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
 11 every eight of those handicap parking spaces but not less than one must be a
 12 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
 13 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
 14 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

15 23. Here, the lack of an accessible, compliant parking space is a violation of
 16 the law.

17 24. Shelves and display units allowing self-service by customers at stores
 18 must be located on an accessible route. 1991 Standards § 4.1.3(12)(b). An
 19 accessible route must be at least 36 inches in width. 1991 Standards § 4.3.3.

20 25. Here, the failure to provide accessible paths of travel in and throughout
 21 the merchandise aisles is a violation of the law.

22 26. In areas used for transactions that may not have a cash register but at
 23 which goods or services are sold or distributed, the business must provide
 24 either: (1) a portion of the main counter which is a minimum of 36 in inches
 25 length shall be provided with a maximum height of 36 inches; or (2) an
 26 auxiliary counter with a maximum height of 36 inches in close proximity to
 27 the main counter; or (3) some sort of qualifying equivalent facilitation. 1991
 28 Standards § 7.2(2). Under the 2010 Standards, where the approach to the

1 sales or service counter is a parallel approach, such as in this case, there must
 2 be a portion of the sales counter that is no higher than 36 inches above the
 3 floor and 36 inches in width and must extend the same depth as the rest of
 4 the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.

5 27. Here, no such accessible transaction counter has been provided in
 6 violation of the ADA.

7 28. A public accommodation must maintain in operable working condition
 8 those features of its facilities and equipment that are required to be readily
 9 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

10 29. Here, the failure to ensure that the accessible facilities were available
 11 and ready to be used by the plaintiff is a violation of the law.

12 30. Given its location and options, the Market is a business that the
 13 plaintiff will continue to desire to patronize but he has been and will continue
 14 to be discriminated against due to the lack of accessible facilities and,
 15 therefore, seeks injunctive relief to remove the barriers.

16
 17 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 18 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
 19 51-53)

20 31. Plaintiff repleads and incorporates by reference, as if fully set forth
 21 again herein, the allegations contained in all prior paragraphs of this
 22 complaint.

23 32. Because the defendants violated the plaintiffs' rights under the ADA,
 24 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
 25 Code § 51(f), 52(a).)

26 33. Because the violation of the Unruh Civil Rights Act resulted in
 27 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
 28 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §

1 55.56(a)-(c.)
2

3 **PRAYER:**

4 Wherefore, Plaintiff prays that this court award damages and provide
5 relief as follows:

6 1. For injunctive relief, compelling defendants to comply with the
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
8 Plaintiff is not invoking section 55 of the California Civil Code and is not
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. Damages under the Unruh Civil Rights Act which damages provide for
11 actual damages and a statutory minimum of \$4,000.

12 3. Reasonable attorney fees, litigation expenses and costs of suit,
13 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

14 Dated: June 17, 2015

CENTER FOR DISABILITY ACCESS

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17 By: _____
18 Mark Potter, Esq.
19 Attorneys for Plaintiff
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